

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**



THE HONOURABLE MR.  
JUSTICE KOEHNEN

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TUESDAY, THE 13TH DAY  
OF OCTOBER 2020, AND  
FRIDAY, THE 6TH  
DAY OF NOVEMBER, 2020

BETWEEN:

**DWIGHT GROVUM and GROVUM EQUITIES INC.**

Applicants

-and-

**ANDREI KOUZNETSOV, KOUZNETSOV EQUITIES INC.  
and AKINVEST-XPT INC.**

Respondents

**APPLICATION UNDER SECTIONS 207 and 248 OF THE BUSINESS  
CORPORATIONS ACT, R.S.O. 1990, c. B.16**

**ORDER**

THIS APPLICATION made by the Applicants for an Order winding up the Respondent, Akinvest – XPT Inc. ("Company") and the distribution of its assets, and for various other relief, was heard on October 5, 2020 via videoconference, following which Mr. Justice Koehnen rendered Reasons for Decision dated October 13, 2020 ("Endorsement"). A further case conference to settle the issues arising out of the Endorsement was heard by videoconference on November 6, 2020, following which this

Court rendered an email direction that was placed in the Court file ("November 6<sup>th</sup> Direction").

**ON HEARING** submissions from counsel for both parties and on reading the Application Record, Supplementary Application Record, Second Supplementary Application Record, Third Supplementary Application Record, Affidavit of Kateryna Ivashyna, sworn October 2, 2020, Application Record of the Respondents, Supplementary Application Record of the Respondents, Second Supplementary Application Record of the Respondents, and Third Supplementary Application Record of the Respondents,

### **Winding up of the Company**

1. **THIS COURT DECLARES**, under section 248(2)(a) and (b) of the *Business Corporations Act*, RSO 1990, c B16 ("OBCA"), that the business of the Company and the powers of Andrei Kouznetsov ("Mr. Kouznetsov") as a director of the Company have been carried out in a manner that is oppressive or unfairly prejudicial to or unfairly disregards the interests of the Applicants.

2. **THIS COURT ORDERS**, under sections 248(3)(e), (h), and (l) of the OBCA, that any Company transactions in relation to the alleged Russian Federal Agency agreement be and are hereby set aside.

### **Distribution of Company Assets**

3. **THIS COURT ORDERS THAT** the payments received from Mannheim on the asset sale pursuant to an Asset Purchase Agreement dated January 8, 2009 ("First Tranche") and a Settlement Agreement dated October 31, 2014 ("Second Tranche") be distributed between Grovum Equities Inc. ("GEI") of 29.878% and Kouznetsov Equities Inc. ("KEI") of 70.121% in accordance with their respective shareholdings in the Company.

4. **THIS COURT ORDERS THAT** any payments to the parties in accordance with this Order shall be made after the debts of the Company are ascertained.

5. **THIS COURT ORDERS THAT** the amount of debt owing by the Company as of the date that the Company received the Second Tranche shall be subtracted from the value of the Second Tranche before its rateable distribution to KEI and GEI after adjustment for any excess payments to Dwight Grovum and his wife, Rhonda Grovum, in connection with the First Tranche.

6. **THIS COURT ORDERS THAT** the Applicants are entitled to a *pro rata* interest in the assets of the Company as of January 31, 2015 including but not limited to the payments received in the First Tranche and Second Tranche.

7. **THIS COURT ORDERS THAT** the Applicants' entitlement to those assets should be determined by adding all the asset values together, subtracting from that any legitimate corporate expenses and liabilities, including but not limited to tax liabilities, arising in respect of those assets and then multiplying the end sum by 29.878%, being GEI's interest in the Company.

8. **THIS COURT ORDER THAT** the corporate expenses and liabilities that are to be deducted from whatever the global assets of the corporation are as of January 31, 2015 are those that are legitimate expenses and liabilities which reasonably relate to the asset value as of January 31, 2015, some of which may arise after January 31, 2015.

#### **Liquidation / Receivership**

9. **THIS COURT ORDERS THAT**, if the parties cannot agree on a speedy mechanism to determine the debts of the Company, then a liquidator/receiver of the Applicants' choice (the "Liquidator/Receiver") shall be appointed under section 248(3)(b) of the OBCA with a mandate to (1) obtain audited financial statements for the Company, if reasonably necessary, (2) take possession of the Company's accounts and assets, (3) wind up the affairs of the Company, and (4) distribute the remaining funds between KEI and GEI in accordance with their respective shareholdings in the Company and in

accordance with the directions contained in this Order, the Endorsement and the November 6<sup>th</sup> Direction.

10. **THIS COURT ORDERS THAT** the ultimate liability for the fees of the Liquidator/Receiver will be determined at the end of the receivership.

11. **THIS COURT ORDERS THAT** each party may be responsible for the cost of that portion of the Liquidator/Receiver's time that, in the view of the Court, was responsible for having the Liquidator/Receiver spend time on the issue. The Liquidator/Receiver shall record its time in a way that groups fees into particular buckets of work so that an appropriate allocation may be made at the end of the day.

12. **THIS COURT ORDERS THAT** the Liquidator/Receiver (i) take possession of all corporate assets and undertakings, not just the settlement payments received from Manheim and (ii) make such inquiries as to the possible existence of corporate assets as the Applicants find reasonable provided, as noted above, that the Applicants may be held accountable for the Liquidator/Receiver's costs of doing so should those investigations prove fruitless or disproportionate.

13. **THIS COURT ORDERS THAT** if there is a dispute about which expenses are to be included under paragraph 8 above, the parties should discuss that with the Liquidator/Receiver and have the Liquidator/Receiver come to a preliminary determination. If the parties disagree with the decision of the Liquidator/Receiver, they will have the ability to contest that issue before the Court before the receivership is wound up.

14. **THIS COURT ORDERS THAT**, in the event that surplus funds remain available following the application of the Company's property in satisfaction of all its debts, obligations and liabilities in accordance with section 221(1) of the OBCA, the Liquidator/Receiver shall distribute such property to the Company's shareholders in

accordance with the process set out below, subject to the right of the Liquidator/Receiver to apply to this Court for further directions concerning such distribution:

- a. GEI will be paid an amount equal to the following (the "Grofum Distribution Amount"):
  - i. the value of the funds in the Company's RBC Phillips, Hager & North Investment Counsel Inc. accounts, being account numbers 463-05076-1-6 1GB and 463-13967-1-2 1GB ("RBC Accounts") on January 31, 2015 and other Company assets that existed on January 31, 2015, if any (for clarity, this does not include the First Tranche amounts that were distributed to shareholders back in 2009); and
  - ii. less all unpaid Company debts and liabilities, including but not limited to tax liabilities, that existed on January 31, 2015 or arose thereafter but which reasonably relate to the asset value as of January 31, 2015 (which includes but is not limited to the Company's unpaid tax liabilities in connection with the First Tranche and the Second Tranche);
  - iii. multiplied by 29.878%, being GEI's shareholding interest in the Company;
  - iv. less USD \$613,107.88 (representing the excess payment received by Dwight Grofum and Rhonda Grofum in connection with the First Tranche);
  - v. plus costs and pre-judgment and post-judgment interest payable to the Applicants in connection with this proceeding in the amount that will be determined by the Court in the future; and
  - vi. less any portion of the cost of the receivership that may be attributed by the Court to the Applicants in accordance with paragraph 11 of this Order.

- b. Notwithstanding paragraph 3, above, KEI will receive the remaining balance of the property of the Company remaining following payment of the Grovum Distribution Amount, less any portion of the cost of the receivership that may be attributed by the Court to the Respondents in accordance with paragraph 11 of this Order.

#### **Other provisions**

15. **THIS COURT ORDERS THAT**, whereas the Company holds funds in American currency and whereas currency will have to be exchanged to pay for certain expenses, the applicable exchange rate shall be the one that prevailed on the date the expenditure is actually paid, unless the exchange rate was more favourable to the Applicants at the time the expense should have been paid, in which case the earlier exchange rate shall apply. This precision is not intended to capture minor fluctuations in the exchange rate but is intended to capture material shifts in the exchange rate since 2015.

16. **THIS COURT DECLARES**, if necessary, that Mr. Kouznetsov is personally liable together with the Company for the balance of the payment of GEI's share of the amounts referred to in paragraph 3 above and that any such amount owing is a debt within the meaning of sections 178(1)(d) and 178(1)(e) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.

17. **THIS COURT ORDERS THAT** pre-judgment and post-judgment interest pursuant to sections 127 and 128 of the *Courts of Justice Act*, RSO 1990, c C43, as amended, shall be paid on all amounts that are ordered to be paid to the Applicants by the Respondents. Whether the Respondents are entitled to simple prejudgment interest or compound prejudgment interest will be determined after hearing further submissions from the parties.

18. **THIS COURT ORDERS THAT** any interest or penalties on the debt described in paragraph 5 above which arose after the Company received the Second Tranche shall come out of KEI's share of the settlement amount.

19. **THIS COURT ORDERS THAT** the Applicants are entitled to their costs of the application and that if the parties cannot agree on the scale and quantum, the applicant may make written submissions within 14 days, the respondent may respond within 7 days and the applicant shall have a further 5 days for reply.

20. **THIS COURT DECLARES THAT** the Orders of Justice Hainey dated March 23, 2017 and April 13, 2018 continue to be in full force and effect until a further Order of this Court.

21. **THIS COURT ORDERS THAT** Mr. Kouznetsov is entitled to draw \$14,000 per month from the accounts of the Company, including but not limited to account with RBC Phillips, Hager & North Investment Counsel Inc..

22. **THIS COURT ORDERS THAT** the Respondents are entitled to withdraw \$50,000 from the accounts of the Company, including but not limited to the accounts with RBC Phillips, Hager & North Investment Counsel Inc., to pay their lawyer, Arkadi Bouchelev, in trust to cover legal expenses.

23. **THIS COURT ORDERS THAT** the Mr. Kouznetsov is entitled to withdraw \$15,000, through his lawyers if necessary, from the accounts of the Company, including but not limited to accounts with RBC Phillips, Hager & North Investment Counsel Inc., for dental expenses he has recently incurred, provided he produces satisfactory bills for those dental expenses to the Applicants' counsel.

24. **THIS COURT ORDERS THAT** the withdrawals referred to in paragraphs 21, 22 and 23 above are not intended to affect the overall calculation of the Applicants' share of the corporate assets as set out in this Order and will not in any way detrimentally impact on the Applicants' share.

25. **THIS COURT ORDERS THAT** the Honourable Justice Koehnen shall remain seized of this matter.

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DWIGHT GROVUM et al.  
Applicants

and

ANDREI KOUZNETSOV et al.  
Respondents

Court File No.: CV-16-11618-00CL

*Ontario*  
**Superior Court of Justice**

*Proceeding commenced at Toronto*

**ORDER**

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